

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WILSON,
CHARLES STILL,
and
TERRANCE STUBBS

Plaintiffs,

- against -

EDWARD “EDDIE” PERRELL d/b/a PERRELL
MUSIC, DYNATONE PUBLISHING COMPANY,
UNICHAPPELL MUSIC, INC., UMG
RECORDINGS, INC., and BROADCAST MUSIC
INC. (BMI).

Defendants.

Civil Action No.: 16 Civ. 00104 (PAE)

ECF Case

**DECLARATION OF ROBERT A. JACOBS IN SUPPORT
OF MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED
COMPLAINT AND DEFENDANT PERRELL’S CROSS-CLAIM**

I, Robert A. Jacobs, declare under 28 U.S.C. § 1746:

1. I am a partner at Manatt, Phelps & Phillips, LLP, attorneys for Defendants UMG Recordings, Inc. (“UMG”), Dynatone Publishing Company (“Dynatone”) and Unichappell Music, Inc. (collectively, “Defendants”), and respectfully submit this Declaration in support of Defendants’ motion to dismiss with prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (1) all claims of Plaintiffs alleged in their First Amended Complaint against Defendants; and (2) the cross-claim of Defendant Edward Perrell (“Perrell”) alleged in his Cross-Complaint against UMG.
2. Annexed hereto as Exhibit 1 is a true and correct copy of an image of the 45 RPM single released in 1973 containing the musical group Sly, Slick & Wicked’s sound recording of

the musical composition *Sho' Nuff (a/k/a Sho' Nuff (You Really Love Him))* (respectively, the “Recording” and “Composition”), with the group’s sound recording of the musical composition *Ready for You* on the B Side.

3. Annexed hereto as Exhibit 2 is a true and correct copy of the Broadcast Music Incorporated (“BMI”) Publisher Clearance Form for the Composition that Perrell filed with BMI on or about July 9, 1973.

4. Annexed hereto as Exhibit 3 is a true and correct copy of the Notice of Use for the Composition that Chappell & Co., Inc. filed in the U.S. Copyright Office on Dynatone’s behalf in or around 1974.

5. Annexed hereto as Exhibit 4 is a true and correct copy of the registration (number RE0000860128) for the renewal term copyright in the Recording that UMG obtained from the U.S. Copyright Office in 2001.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 14, 2016.

/s/ Robert A. Jacobs
Robert A. Jacobs

EXHIBIT 1





STEREO
PE-625
(PE 625 B-S)
2066 355
Time 3:39

There
Music (BM)

Poppo

JAMES BROWN
THE HIT MAN
GODFATHER
OF SOUL

Produced by
James Brown
Arranged by
Eddie Perrelli
Bert "Super
Charts" DeCoteaux
Engineer:
Bob Both

READY FOR YOU
-Jimmy Norman-Alvin Taylor-
Sly, Slick & Wicked
DISTRIBUTED BY POLYDOR INCORPORATED NEW YORK, N. Y.
© POLYDOR INCORPORATED

EXHIBIT 2



Publisher Clearance Form

Broadcast Music, Inc., 123 Fifth Ave., N.Y., N.Y. 10017
Attn: Index Department

THIS FORM MUST BE FILLED OUT IN
ACCORDANCE WITH INSTRUCTIONS ON
THE REVERSE SIDE AND BOTH COPIES
MUST BE RETURNED TO BMI.

FOR BMI USE
DO NOT WRITE BELOW

LOGIC

PUNCHED-VERIFIED
MAY 21 1973

DATE: MAY 21 1973
BY: [Signature]

TITLE - ONE WORK PER FORM

SHO' NUFF

CREDIT RATE

IF BASED ON PUBLIC DOMAIN - GIVE ORIGINAL TITLE AND SOURCE

CHECK IF WORK IS FROM
☐ MOTION PICTURE
☐ BROADWAY SHOW
☐ OFF BROADWAY SHOW

GIVE TITLE OF FILM OR SHOW

NON WORLD

DO NOT ANNOUNCE

| WRITER NAME(S) | | | WRITER ADDRESS(ES) | | Part. Riv | Share | Writer Code No. | No Print in Buft | Type Code |
|----------------|----------|--------|---|------------|-----------|-------|--------------------|------------------|-----------|
| LAST | FIRST | MIDDLE | | | | | | | |
| STILL | CHARLES | R | 1700 | BWAY, N.Y. | B.M.I. | 1/3 | | | 21 |
| STUBB | TERRANCE | | 1700 | BWAY, N.Y. | B.M.I. | 1/3 | | | 22 |
| WILSON | JOHN | | 1700 | BWAY, N.Y. | B.M.I. | 1/3 | | | 23 |
| | | | | | | | | | |
| | | | | | | | | | |
| PUBLISHER(S) | | | IF WORK IS OF FOREIGN ORIGIN, GIVE NAME OF ORIGINAL PUBLISHER | | Part. Riv | Share | Publisher Code No. | No Print in Buft | Type Code |
| | | | | | Orgn | | | | |
| BENJAMIN | MUSIC | | | | B.M.I. | 1/3 | | | 31 |
| BYVA | FLB. CO. | | | | B.M.I. | 1/3 | | | 32 |
| PERRELL | MUSIC | | | | B.M.I. | 1/3 | | | 33 |

1ST RECORD RELEASE
RECORD LABEL & NO.

PEOPLE - RECORD / SRI SINGH & SINGH / 27 / 15

MAY 21 1973 EU 466185
COPYRIGHT DATE AND NUMBER

MAY 1973
DATE SUBMITTED TO BMI

[Signature]
AUTHORIZED SIGNATURE

INDEX DEPT.

0079371 JL-973

NAME AND ADDRESS OF SUBMITTING PUBLISHER

EDWARD MAURICE PERRELL
157 WEST 80 ST - APT 3 D
NEW YORK CITY, N.Y.
10024

MAIL
CONFIRM-
ATION
TO

3

CLEARED IN ACCORDANCE WITH TERMS ON REVERSE SIDE

Rec

EXHIBIT 3

PAGE 3

FORM U

Acknowledgment of Receipt of a Notice of Use Of Copyrighted Music on Mechanical Instruments

RECORDED IN NOTICE OF USE RECORDS

VOLUME **126** PAGE **486**

DO NOT WRITE HERE

There has been filed in the Copyright Office a notice of use (as required by section 1(e) of Title 17, U.S. Code) covering the musical composition(s) listed herein. The notice was recorded in the volume and page noted in the upper right corner of this page, following its receipt on the date given in the lower left corner of page 4.

Barbara Ringer

Register of Copyrights
United States of America

1. Name and Address of Copyright Owner:

Name Dynatone Publishing CompanyAddress 609 Fifth Avenue, New York, New York

2. Musical Compositions Covered by Notice of Use:

(1) Title and Author END' MUFF - John Wilson - Charles Still - Terrance StubbsRegistration No. _____ Year date: 1974

(2) Title and Author _____

Registration No. _____ Year date: 19____

(3) Title and Author _____

Registration No. _____ Year date: 19____

(4) Title and Author _____

Registration No. _____ Year date: 19____

(5) Title and Author _____

Registration No. _____ Year date: 19____

(6) Title and Author _____

Registration No. _____ Year date: 19____

(7) Title and Author _____

Registration No. _____ Year date: 19____

(8) Title and Author _____

Registration No. _____ Year date: 19____

(9) Title and Author _____

Registration No. _____ Year date: 19____

Complete all applicable spaces on next page

EXAMINER
cmj

3. Deposit account:

4. Send correspondence to:

Chappell & Co., Inc.

Name

same as below

Address

5. Send acknowledgment to:

(Type or
print
name and
address)

Name

Chappell & Co., Inc.

Address

609 Fifth Avenue
(Number and Street)New York
(City)New York
(State)10017
(Zip Code)

Information Concerning the "Notice of Use" Requirements

NOTE.—Filing a *notice of use* on Form U is not a substitute for securing copyright protection. The *notice of use* is concerned with mechanical recording rights in musical compositions that have already been copyrighted. Form E, which may be obtained from the Copyright Office on request, should be used to secure copyright registration for a musical composition.

When to Use Form U. A *notice of use* on Form U should be filed by the owner of copyright in a musical composition when he has recorded his work, or licensed it for recording, on mechanical instruments such as phonograph records.

Statutory Provisions. The detailed *notice of use* provisions of the copyright statute may be found in sections 1(e) and 101(e) of Title 17, United States Code. The following is a general outline of the most important of these provisions.

Recording Rights. The copyright law gives the owner of copyright in a musical composition the exclusive right to make the first recording or reproduction of his composition on mechanical devices such as phonograph records, but only under certain conditions. Once the copyright owner has permitted the musical work to be recorded, any other person has a right to make recordings of the work.

— This person may negotiate a recording contract with the copyright owner and record the composition under the terms specified in the agreement.

— Or, he may use the "compulsory licensing" provisions of the law, which do not require him to get permission from the copyright owner.

The "Compulsory License." Under the "compulsory licensing" provisions of the copyright statute, any person may make recordings of a musical composition which the copyright owner has already recorded or licensed for recording, if he pays the copyright owner the royalty

provided in the copyright statute and meets certain other requirements.

The Notice of Use. As soon as the copyright owner has recorded his musical work or licensed someone else to make the first recording, he should file a *notice of use* in the Copyright Office.

— This *notice of use* is submitted on Form U and should be accompanied by the recording fee specified in the instructions on page 1.

— The law provides that any failure to file such a notice shall be a complete defense to any suit, action, or proceeding for any infringement of the right to reproduce the musical composition mechanically.

Other Points to Remember:

— The Copyright Office does not register claims to exclusive rights in mechanical recordings themselves or in the performances they reproduce. For this reason, phonograph records should not be sent to this office, and the *notice of use* should not contain any reference to the performance or the performers.

— Recordings of readings of literary works, lectures, dramatic presentations, and the like, do not fall within the *notice of use* provisions of the statute.

— Only copyrighted music should be listed in a *notice of use*. No purpose is served by including musical compositions that are not copyrighted.

— Care should be taken that the information given on Form U is complete and accurate, since the Copyright Office does not undertake to check the stated facts.

FOR COPYRIGHT OFFICE USE ONLY

Notice of use received

Fee received

17 \$3.00 DA

EXHIBIT 4



The Copyright Public Catalog will not be available from from 5:00pm EDT, Friday, July 29 through 6:00pm EDT, Sunday, July 31 due to maintenance activities. We apologize for any inconvenience to our users.

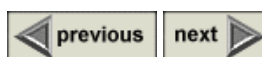
[Help](#)[Search](#)[History](#)[Titles](#)[Start Over](#)

Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Copyright Number = RE0000860128

Search Results: Displaying 1 of 1 entries



Labeled View

Sho' nuff. Ready for you. Artist: Sly, Slick and Wicked, sound recording:...

Type of Work: Sound Recording

Registration Number / Date: RE0000860128 / 2001-12-21

Renewal registration for: N00000008141 / 1973-06-28

Title: Sho' nuff. Ready for you. Artist: Sly, Slick and Wicked, sound recording: Polydor, Inc.

Notes: Disc: music.

Copyright Claimant: UMG Recordings, Inc. (PWH)

Basis of Claim: New Matter: sound recording.

Copyright Note: C.O. correspondence.

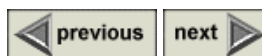
Variant title: Sho' nuff

Other Title: Ready for you

Names: [Sly, Slick and Wicked](#)

[Polydor, Inc.](#)

[UMG Recordings, Inc.](#)



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| | | |
|---------------------------|----------------------|-----------------------|
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| Enter your email address: | <input type="text"/> | Email |

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